

passed by the Sixteenth Legislature, February 21, 1879," was taken up, read third, time and passed.

Senate bill No. 2, entitled "An act to repeal article 2234 of an act entitled 'an act to adopt and establish the Revised Civil Statutes of the State of Texas,' passed by the Sixteenth Legislature," was taken up.

Senator Henderson moved that it be postponed, and made the special order for Friday next. Motion lost, and bill passed by the following vote:

YEAS—17.

Buchanan of Grimes	Homan,	Stubbs,
Buchanan of Wood,	Houston,	Terrell,
Cooper,	Lane,	Tilson,
Gooch,	Lightfoot,	Weatherred,
Harris,	Moore,	Wynne.
Hightower,	Patton,	

NAYS—13.

Burges,	Martin of Cooke,	Ross,
Davenport,	Martin of Navarro,	Shannon,
Duncan,	Powers,	Stewart,
Henderson,	Rainey,	Swain.
Lair,		

NOT VOTING—1.

Burton.

A message was received from the House announcing the adoption of the following concurrent resolution:

Resolved, That a sub-committee of three be appointed by the Penitentiary Committee of the House to act in conjunction with two from the Senate, (the Senate concurring,) whose duty it shall be to visit the State penitentiaries at Huntsville and at Rusk, and to examine carefully and thoroughly into the character, condition, management, and capacity of each of said institutions, and make a report of their action to the Committee on Penitentiaries, and make such suggestions, and recommendations as they may deem fit and proper.

It shall also be the duty of said committee to inquire into and investigate all cases of alleged harsh or cruel treatment of convicts, whether within the walls of said penitentiaries, or in convict camps, or elsewhere.

The members of said committee shall have the power to issue process to compel the production of persons and papers, to administer oaths; and such committee may employ such aid as they may deem expedient or necessary; and that the expenses of such committee shall be paid out of the contingent fund.

Senate Bill No. 11, entitled "An act to amend article 316 of the Penal Code of the State of Texas" was taken up, read third time, and passed by the following vote:

YEAS—18

Buchanan of Wood,	Homan,	Stubbs,
Burges,	Houston,	Swain,
Burton,	Lair,	Terrell,
Davenport,	Lane,	Tilson,
Harris,	Moore,	Weatherred,
Hightower,	Stewart,	Wynne.

NAYS—10.

Buchanan of Grimes	Martin of Cooke,	Rainey,
Duncan,	Martin of Navarro,	Ross,
Gooch,	Powers,	Shannon.
Henderson,		

Senator Buchanan of Grimes, chairman of Committee on Engrossed Bills, submitted the following report:

COMMITTEE ROOM,
AUSTIN, January 25, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Engrossed Bills beg leave to report that they have examined and carefully compared Senate bill No. 20, being "An act to amend chapter 4, title 9, of an act entitled 'an act to adopt and establish a Penal Code and a Code of Criminal Procedure for the State of Texas, passed by the Sixteenth Legislature,'" and find the same correctly engrossed.

BUCHANAN of Grimes, Chairman.

On motion of Senator Duncan, the Senate took a recess of five minutes.

Recess having expired, the Senate was called to order.

Roll called—quorum present.

The hour of the special order set for 12 o'clock M. to-day (the election of a United States Senator), having arrived, the

President announced the same, and that the Senate would now go into the election of a United States Senator, to succeed the Hon. S. B. Maxey, whose term of office will expire March 4, 1881.

Roll called, and two Senators absent and not answering to their names.

Senator Houston moved a call of the Senate; call sustained.

Roll called—Senate full

Senator Stewart nominated the Hon. S. B. Maxey, and seconded by Senator Terrell.

Senator Shannon nominated the Hon. J. W. Throckmorton, and seconded by Senator Lair.

The following Senators, on a call of the roll, voted for the Hon. S. B. Maxey:

Buchanan of Grimes	Henderson,	Powers,
Buchanan of Wood,	Hightower,	Stewart,
Burges,	Homan,	Stubbs,
Cooper,	Lane,	Swain,
Davenport,	Lightfoot,	Terrell,
Duncan,	Moore,	Tilson,
Gooch,	Patton,	Wynne—23.
Harris,		

The following Senators voted for Hon. J. W. Throckmorton:

Houston,	Martin of Navarro,	Shannon,
Lair,	Rainey,	Weatherred—8.
Martin of Cooke,	Ross,	

The following Senator voted for Hon. E. J. Davis:

Burton—1.

After the announcement of the result, on motion of Senator Gooch, the Senate adjourned until 10 o'clock A. M. to-morrow.

FOURTEENTH DAY.

SENATE CHAMBER,
AUSTIN, January 26, 1881. }

Senate met pursuant to adjournment; the President in the chair.

Roll called—quorum present.

Prayer by the Chaplain.

On motion of Senator Buchanan of Wood, the reading of the journal of yesterday was dispensed with and the same adopted.

Senator Davenport, for Judiciary Committee No. 1, submitted the following reports:

COMMITTEE ROOM,
AUSTIN, January 25, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate Bill No. 72, being "An act to procure from the publishing house owning the copyrights, certain volumes of the early reports of the Supreme Court of the State of Texas," have had the same under consideration, and I am instructed to report back the bill with recommendation that it do pass.

DAVENPORT, for Committee.

Bill read first time.

COMMITTEE ROOM,
AUSTIN, January 26, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate bill No. 60, which has for its object to provide for a reference of cases pending in the Supreme Court and Court of Appeals to the Commissioners of Appeals for examination and report, have considered the same, and I am instructed to report it back with the accompanying amendments, with recommendation that, as amended, it do pass.

The committee are of opinion that the caption of the bill should be changed, and the act made amendatory of the act creating the commission. The object of the other amendments reported is, to continue the existence of the commission for two years from October 1, 1881, in the event a new judiciary article in the Constitution should not be submitted and adopted by the people.

It is believed that the bill will enlarge the public benefit derived from the Commissioners of Appeals, by providing for the transfer

of causes for examination and report to that tribunal, without reference to the consent of parties.

The crowded condition of the dockets of the Supreme Court and Court of Appeals at Galveston and Austin requires that, as a prudential measure, provision should now be made for a more expeditious method of disposing of the business of those courts than the present law affords.

TERRELL, Chairman.

Bill read first time.

On motion of Senator Davenport, Senator Terrell was excused until Saturday next on account of important business.

Senator Lair moved that Senator Duncan be excused the remainder of the week to attend to important business. Adopted.

On motion of Senator Gooch, Senator Martin of Navarro was excused for the remainder of the week on account of sickness in his family.

Senator Lane, for Judiciary Committee No. 1, submitted the following report:

COMMITTEE ROOM,
AUSTIN, January 25, 1881.

Hon. L. J. Storey, President of the Senate:

Your Judiciary Committee No. 1 have had under consideration Senate bill No. 17, entitled "An act making the office of county surveyor an office of record," and direct me to report the same back to the Senate, with the recommendation that it do pass.

LANE, for the committee.

Bill read first time.

Senator Lane offered a joint resolution amending section 30, article 16, of the Constitution, fixing the duration of all offices for a period of four years, except members of the Legislature and the judges of the Appellate and Supreme Courts. Referred to Committee on Constitutional Amendments.

Senator Stubbs moved that the Senate go into executive session. Adopted.

The Senate then went into executive session.

IN SENATE.

Senator Cooper introduced a bill entitled "An act to amend article 3066 of the Revised Civil Statutes of the State of Texas." Referred to Judiciary Committee No. 1.

Also, a bill entitled "An act to amend article 3069 of the Revised Civil Statutes of the State of Texas." Referred to Judiciary Committee No. 1.

Also, a bill entitled "An act to amend article 1280 of the Revised Civil Statutes of the State of Texas." Referred to Judiciary Committee No. 1.

Also, a bill entitled "An act to amend article 3060 of the Revised Civil Statutes of the State of Texas." Referred to Judiciary Committee No. 1.

Senator Swain moved to postpone pending business and take up House concurrent resolution. Adopted, and House concurrent resolution, relating to penitentiaries, taken up and read.

Senator Swain moved to amend by striking out the word "two" in line 5, and inserting the word "three" in lieu thereof. Adopted, and the resolution, as amended, adopted.

The following message was received from the Governor:

EXECUTIVE OFFICE, STATE OF TEXAS,
AUSTIN, January 25, 1881.

To the Honorable, the Senate of Texas, in the Legislature assembled.

I respectfully submit the following name for appointment to the office herein named: Mr. I. W. Middlebrook, of Colorado county, to be assistant superintendent of the penitentiary.

O. M. ROBERTS, Governor.

Gentlemen of the Senate:

It is proper to state that the above gentleman was appointed to the office named above under an act of the Legislature of the ninth of July, 1879, providing for his office to terminate with that of the Governor appointing him, which had escaped my attention, and for that reason it was not sent sooner to the Senate for his confirmation. I respectfully refer to the penitentiary report, pages 14 and 15, for the merits of his services.

Respectfully submitted,

O. M. ROBERTS, Governor.

On motion of Senator Patton, the Senate agreed to go into executive session to-morrow morning, just after morning call, to consider the above appointment.

Senator Stubbs moved that the Secretary inform the Governor that the Senate had advised and consented to the appointment by him of A. W. Spaight to the office of Commissioner of Insurance, Statistics and History.

Senator Homan moved to amend by having said confirmation spread upon the Senate journal. Adopted, and the motion, as amended, adopted.

The following message was received from his Excellency the Governor:

EXECUTIVE OFFICE, STATE OF TEXAS,
AUSTIN, January 26, 1881.

To the Honorable Senate and House of Representatives of the State of Texas:

Gentlemen—Herewith is presented in a tabulated form the result of a digest of the answers to the questions, which are also herewith submitted, sent out in December last to the county judges. There are in the State one hundred and sixty-two (162) organized counties. Answers have been received from one hundred and three (103) of them.

From this proportion a reasonably definite opinion can be formed of the condition of the whole State in relation to the different subjects investigated.

Absolute accuracy in making the digest has been unattainable, partly from the inherent difficulty of the undertaking, and partly from the somewhat vague way in which some of the questions have often been answered. It is thought, however, to be sufficiently accurate to be very useful as a guide in legislating on many subjects of public importance. It is believed that in the statement of the number of days the county and district courts have been in session in each county, the expenses of keeping and caring for prisoners, the expense on account of juries (it may be that the cost of the grand juries has not always been given as a part of that of juries), the amount paid as salaries to county judges out of the county treasuries by order of the commissioners' court, and to district court and county clerks and sheriffs, there is a very close approximation to accuracy.

Attention must be called to the marginal comments under the head of "remarks." Characters found in the same column with the figures refer to some note or comment in the margin.

Some judges have evidently misunderstood some of the questions (notably as to the number of prisoners confined in jail awaiting trial), and when this is made obvious by their answers, it is noted.

A general summary shows, making allowance for possible mistakes in addition, the following result, limited of course to the one hundred and three counties.

District courts in session.....4572 days.
County courts in session.....4011.

In connection with this it must be remembered that in several of the counties the civil and criminal jurisdiction of that court has been taken away.

Amount of aggregate salaries paid to the county judges by commissioners' courts.....	\$38,854
Amount of salaries paid to county clerks.....	15,315
Amount of salaries paid to district clerks.....	20,405
Amount of salaries paid to sheriffs.....	23,220
Amount paid for juries in county and district courts.....	200,279
Amount paid for support of prisoners and for guards.....	131,353
Average number of prisoners kept in jail awaiting trial.....	912
(See what has been said about errors in answer to this question.)	
Number of deranged people kept in jail during the year.....	133
Number of deranged people now in the counties heard from.....	212
(Judges have frequently answered "I don't know.")	
Cost during the year to the counties for keeping the deranged people.....	\$5,385
Number of deranged people now kept in jail.....	11
Number of paupers supported by the counties during the year.....	730
Cost of supporting these paupers.....	\$62,450
The number of counties having poor farms.....	17
Cost of the poor farms.....	\$11,486
Number of deaf and dumb in the counties between the age of 8 and 24 years.....	61
(This question frequently answered "I don't know.")	
Number of blind between these ages.....	39
(This sometimes answered "I don't know.")	
Number of death penalties executed.....	14
Cost to counties of executing these death penalties.....	\$1,056
(In this amount, in one instance, and probably more, has been included cost of imprisonment.)	
Number of deaths by violence.....	285
(In this are included some suicides and accidental deaths.)	
Number of prisoners escaped from jail.....	150
Number of prisoners recaptured.....	69
Number of persons imprisoned for fines.....	1,527
Number hired out to pay fines.....	981

Respectfully submitted,

O. M. ROBERTS, Governor.

(For tabulated statement, see Appendix A.)

Senate Bill No. 20, entitled "An act to amend chapter 4, title 9, of an act entitled 'an act to adopt and establish a Pe-

nal Code and a Code of Criminal Procedure for the State of Texas,' passed by the Sixteenth Legislature," being in the regular order of business, was taken up and read third time.

Senator Cooper moved the recommitment of the bill to Judiciary Committee No. 2.

Senator Homan moved the previous question on the passage of the bill. Motion withdrawn.

A message was received from the House extending an invitation to the Senate to meet with the House of Representatives in joint session, at 12 m. to-day, for the purpose of counting the vote cast on yesterday for United States Senator, and declare the result; and that the House has concurred in Senate amendment to House resolution concerning penitentiaries.

Senator Burges offered the following amendment:

That the word "and" in the clause defining and fixing the punishment be stricken out, and the word "or" be inserted, making the penalty in the alternative in the discretion of the jury.

Senator Martin of Cooke, moved the previous question on the passage of the bill and pending amendment and motion.

Motion seconded, and main question ordered.

The amendment of Senator Burges was then lost by the following vote:

YEAS—13.

Buchanan of Grimes	Houston,	Rainey,
Burges,	Lair,	Ross,
Cooper,	Martin of Cooke,	Stubbs,
Davenport,	Powers,	Swain.
Henderson,		

NAYS—15.

Buchanan of Wood,	Homan,	Shannon,
Burton,	Lane,	Stewart,
Gooch,	Lightfoot,	Tilson,
Harris,	Moore,	Weatherred,
Hightower,	Patton,	Wynne.

Senator Cooper's motion to recommit was then voted on and lost by the following vote:

YEAS—9.

Buchanan of Grimes	Davenport,	Powers,
Burges,	Henderson,	Ross,
Cooper,	Houston,	Stubbs.

NAYS—19.

Buchanan of Wood,	Lane,	Shannon,
Burton,	Lightfoot,	Stewart,
Gooch,	Martin of Cooke,	Swain,
Harris,	Moore,	Tilson,
Hightower,	Patton,	Weatherred,
Homan,	Rainey,	Wynne.
Lair,		

The bill was then voted on and passed by the following vote:

YEAS—15.

Buchanan of Wood,	Homan,	Shannon,
Burton,	Lane,	Stewart,
Gooch,	Lightfoot,	Tilson,
Harris,	Moore,	Weatherred,
Hightower,	Patton,	Wynne.

NAYS—13.

Buchanan of Grimes	Houston,	Rainey,
Burges,	Lair,	Ross,
Cooper,	Martin of Cooke,	Stubbs,
Davenport,	Powers,	Swain.
Henderson,		

On motion of Senator Patton, one hundred copies of the Governor's message was ordered printed.

On motion of Senator Houston the Senate adopted the resolution of the House, passed this morning by that body, brought to the Senate, requesting the Senate to meet the House in joint session at 12 o'clock m., to-day, in its hall, with regard to the election of a United States Senator, to succeed Hon. S. B. Maxey, whose term expires on the fourth of March next.

On motion of Senator Gooch, the Senate then proceeded to the House of Representatives:

IN JOINT SESSION.

Senate roll called—quorum present.

House roll called—quorum present.

The minutes of the Senate of yesterday with regard to the election of a United States Senator were read.

The minutes of the House of yesterday with regard to the election of a United States Senator were read.

The Speaker of the House then announced that Hon. S. B. Maxey had on yesterday received in the Senate 22 votes and in the House 51 votes, making the total in both houses of 73 votes.

That the Hon. J. W. Throckmorton had on yesterday in the Senate received 8 votes, and in the House 34 votes, making the total of 42 votes in both houses of the Legislature.

That the Hon. E. J. Davis had received on yesterday in the Senate one vote, and in the House 5 votes, making the total of 6 votes in both bodies.

And that the Hon. John H. Reagan received one vote on yesterday in the House of Representatives.

The Speaker of the House of Representatives then announced that the Hon. S. B. Maxey having received on yesterday a majority of the votes of the Senate and of the House of Representatives for United States Senator, was duly and constitutionally elected United States Senator for the State of Texas for six years, commencing on the fourth of March, A. D. 1881.

Senator Swain moved that the joint session do now adjourn. Adopted.

On motion of Senator Houston the Senate then retired to its chamber.

IN SENATE.

Senator Patton, chairman of Committee on State Affairs, by leave, submitted the following report:

COMMITTEE ROOM,
AUSTIN, January 25, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on State Affairs have duly considered Senate bill No. 73, entitled "An act defining who are officers of this State, and entitled to the salaries and fees of office," and direct me to return the same to the Senate with the recommendation that it do pass.

PATTON, Chairman,

Bill read first time.

Senate bill No. 21, entitled "An act to amend article 1587, title 32, chapter 12 of the Revised Civil Statutes of the State of Texas," was taken up, read third time and indefinitely postponed.

Senate bill No. 26, entitled "An act to amend article 4752, chapter 4, title 95, of the Revised Civil Statutes, adopted February 21, 1879," was taken up and read third time.

Senator Buchanan of Wood offered the following amendment: Amend by adding the emergency clause as follows. to-wit:

Inasmuch as the sales of property for taxes due thereon for the year 1880 will take place in a few months, and it is important that the advertisement of such sales should be published as provided by this act, therefore an imperative public necessity exists for this act to take effect from and after its passage, and it is hereby so enacted.

Adopted by the following vote:

YEAS—24.

Buchanan of Wood,	Houston,	Rainey,
Burges,	Lair,	Ross,
Davenport,	Lane,	Stewart,
Gooch,	Lightfoot,	Stubbs,
Harris,	Martin of Cooke,	Swain,
Henderson,	Moore,	Tilson,
Hightower,	Patton,	Weatherred,
Homan,	Powers,	Wynne.

NAYS—1.

Cooper.

NOT VOTING—3.

Buchanan of Grimes	Burton,	Shannon.
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Senator Cooper offered the following amendment: Amend by striking out on page 2, line 2, "separate tract or parcel of," and inserting the word "persons" in lieu thereof. Lost by the following vote:

YEAS—3.		
Cooper,	Houston,	Lair.
NAYS—22.		
Buchanan of Wood,	Homan,	Shannon,
Buchanan of Grimes	Lightfoot,	Stewart,
Burges,	Martin of Cooke,	Stubbs,
Davenport,	Moore,	Swain,
Gooch,	Patton,	Tilson,
Harris,	Powers,	Weatherred,
Henderson,	Rainey,	Wynne.
Hightower,		

NOT VOTING—3.
Burton, Lane, Ross.

The bill was then passed by the following vote:

YEAS—23.		
Buchanan of Grimes	Lair,	Shannon,
Buchanan of Wood,	Lane,	Stewart,
Burges,	Lightfoot,	Stubbs,
Davenport,	Moore,	Swain,
Gooch,	Patton,	Tilson,
Harris,	Powers,	Weatherred,
Homan,	Rainey,	Wynne.
Houston,	Ross,	

NAYS.
Cooper.

NOT VOTING—4.
Burton, Martin of Cooke, Henderson, Hightower,

Senator Martin of Cooke explained to the Senate that he had a direct interest in the passage of the bill, and asked to be excused. Granted.

On motion of Senator Gooch the Senate agreed to reconsider the vote by which 100 copies of the Governor's message was ordered printed.

Senator Gooch offered the following substitute for the motion under consideration:

That the Printing Committee contract for the printing of 1000 copies extra of the Senate Journal containing the Governor's message and accompanying papers.

Senator Buchanan of Grimes moved to amend the substitute by striking out "1000" and inserting "500."

Senator Gooch raised the point of order that as his amendment contained the larger number it should have precedence. Sustained, and his substitute was adopted by the following vote:

YEAS—15.		
Buchanan of Wood,	Harris,	Patton,
Burges,	Henderson,	Stubbs,
Cooper,	Hightower,	Swain,
Davenport,	Homan,	Weatherred,
Gooch,	Lane,	Wynne.
NAYS—11.		
Buchanan of Grimes	Martin of Cooke,	Shannon,
Burton,	Moore,	Stewart,
Lair,	Rainey,	Tilson.
Lightfoot,	Ross,	
NOT VOTING—2.		
Houston,	Powers.	

Senator Buchanan of Wood, by leave, introduced a bill entitled "An act to amend articles 4746, 4747, 4748 of the Revised Statutes of the State of Texas," adopted at the regular session of the Sixteenth Legislature." Referred to Committee on Finance.

Senator Lane, by leave, introduced a bill entitled "An act to validate certain acts of notaries public who have used seals with the word 'Texas' engraved between the points of the star thereon instead of around the margin thereof." Referred to Judiciary Committee No. 1.

Senator Buchanan of Grimes, chairman of Committee on Engrossed Bills, submitted the following report:

COMMITTEE ROOM,
AUSTIN, January 26, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on Engrossed Bills have examined Senate bill No. 23, being "An act to amend article 2266, chapter 4, title 38, of 'an act to adopt and establish the Revised Civil Statutes of the State of Texas,' passed by the Sixteenth Legislature of Texas," and find the same correctly engrossed.

Senate bill No. 31, entitled an act to amend article 1547 of the Revised Civil Statutes, passed February 21, 1879," was taken up, read second time, and ordered engrossed.

(Senator Houston in the chair.)

Senate Bill No. 32, entitled "An act regulating the removal of the disabilities of minors," was taken up and read second time.

Committee amendments adopted and bill ordered engrossed.

(President in the chair.)

Senate Bill No. 40, entitled "An act to amend article 605, of an act entitled 'an act to adopt and establish a Penal Code and Code of Criminal procedure for the State of Texas,' passed by the Sixteenth Legislature," was taken up.

Pending its consideration, on motion of Senator Cooper, Senate adjourned till 10 o'clock to-morrow morning.

FIFTEENTH DAY.

SENATE CHAMBER,
AUSTIN, January 27, 1881. }

The Senate met pursuant to adjournment, Lieutenant-Governor Storey in the chair.

Roll called—quorum present.

Prayer by Rev. Mr. Cross.

On motion of Senator Burton, the reading of the journal of yesterday was dispensed with, and the same adopted.

Senator Homan suggested the correction of the journal of yesterday with regard to the confirmation of A. W. Spaight for Commissioner of Insurance, Statistics and History, which correction was accordingly made.

Senator Stewart presented a memorial signed by citizens of Harris county, complaining that persons incurring fines for misdemeanors, and being too poor to pay them, are not allowed, when satisfying those fines by manual labor, under the direction of the commissioners' court, sufficient per diem pay for such labor, and recommending that the per diem pay of such laborers be increased to \$2, and the punishment of county convicts for insubordination or refusal to labor be prohibited. Referred to Judiciary Committee No. 2.

Senator Henderson presented a petition signed by farmers, stockraisers and householders of Brazos county, asking the Legislature to amend article 748 of the Penal Code, so as to make the theft of any sheep, hog or goat, under the value of twenty dollars, a felony, and punishable by confinement in the penitentiary not less than one and not more than two years. Referred to Judiciary Committee No. 2.

Senator Powers presented a petition signed by citizens and tax-payers of Nueces and Duval counties, praying for an appropriation sufficient to increase the command of Captain T. L. Oglesby, now in the public service, from its present strength of twenty-five men to sixty, and defray the expenses of the same, to be employed in suppression of lawlessness and crime upon the frontier. Referred to Committee on Frontier Protection.

Senator Patton, chairman of Committee on State Affairs, submitted the following report:

COMMITTEE ROOM,
AUSTIN, January 26, 1881.

Hon. L. J. Storey, President of the Senate:

Your Committee on State Affairs have had under consideration Senate Joint Resolution No. 19, requiring the employment of female clerks, and a majority of said committee direct me to report